



# **Montana Fish, Wildlife & Parks**

**Region 1  
490 N. Meridian Road  
Kalispell, MT 59901**

**Decision Notice  
and  
Finding of No Significant Impact  
for  
Foy's Lake Site Development and Land Trade  
Environmental Assessment**

**November 23, 2009**

**Description of the Proposed Action:**

Montana Fish, Wildlife & Parks proposed developing the current parking area adjacent to the two parcels of FWP land on the northeastern shore of Foy's Lake. The proposed action includes developing a single ingress and egress point, defined parking area, a defined trail system, installing site identification and regulation signage, and installing a vault latrine. FWP also proposed to trade approximately 0.496 acres with Montana Forest Products in order to consolidate public ownership.

**Public Comment:**

Two public scoping meetings were held prior to the development of the draft environmental assessment (EA). These meetings were held on September 25 and November 13, 2007, at which time site issues were identified and solutions were discussed. The outcomes from the scoping meetings were utilized to develop alternatives, which were evaluated in the EA.

The public was notified in the following manners to comment on the EA alternatives:

- Two legal ads published in the Daily Inter Lake and Helena Independent Record newspapers
- One statewide press release
- Public notice on the Fish, Wildlife & Parks web site: <http://fwp.mt.gov>.

The public review and comment period began August 31, 2009, and was extended through November 10, 2009. In response to requests from members of the public, a meeting was held on November 4, 2009, at the Lone Pine Visitor Center to further discuss the proposed FWP actions.

**Response to Comments:**

Twenty-four letters of comment were received, with a total of eighteen that were supportive of the proposal in general. Three comments were neutral, while one was against the proposal. Two letters, one of which was a petition signed by fourteen individuals, were opposed to the project if a latrine was not included. Individual comments are grouped by issue and summarized below.

### ***Vault Latrine***

- “Plan should be revised to include a vault latrine during the initial site construction...this is a public health issue.”
- “Hope vault latrine is considered in the preliminary development as public health and safety warrant this improvement.”
- “Support the necessity of a vault latrine.”
- “...to protect the water quality, wildlife and aesthetics it is equally important to provide a vault toilet...very short sighted to make such improvements in the area without providing for basic human needs.”
- “Approval for installing a vault latrine.”
- “The shortage of adequate restroom facilities creates a serious sanitation problem...I ask that you would place the installation of a vault toilet at this site as a very high priority.”
- “Installation of a toilet is a huge priority.”
- “A permanent toilet facility should be a high priority.”
- “The restroom situation is a big concern. A restroom is a must.”
- “I support building the vault toilet in such a way that it is possible to landscape around the toilet to somewhat hide it from the road and lake.”
- “If the latrine was strategically located it may not present itself as a vandalism target, but would possibly be more accessible to the beach user...use of the toilet will depend on its “Location”...are you planning on servicing the toilet daily? It must be kept clean for the public to use otherwise they will end up going wherever.”
- “We are concerned that FWP will not be making a vault toilet the top priority in the proposed site development.”
- “The inclusion of a vault toilet in the plan should be a priority in development of the site...should be a part of the initial proposal...necessary now to alleviate further impacts to soil and water at the site.”
- “Placement of a vault latrine is an item of interest to the landowners nearby and the public who would use it. Proximity to the parking area would be important, and the landscaping that would blend it with the area is important to the residents who would view it daily.”
- “The proposed vault latrine is an important component of this proposal. Public health and safety, particularly given the high numbers of current users and projected slight increase in use after site improvements are complete, warrant this improvement.”
- “I find your analysis incomplete in that you have considered impacts to the Lone Pine Ranches homeowners, but not a word was mentioned about the significant impacts to the Treasure Island homeowners...your proposed location of the vault latrine on the west end of FWP property...that location would have greater impacts to the Treasure Island homeowners...I would propose a location near the proposed parking lot.”
- “This park should not be developed at all unless you are committed to installing a vault latrine. Installation of a vault latrine should be the highest priority. This park development should not be initiated unless you are ready and funded to install the latrine first.”
- “I am protesting any work be started on improvement to the Park Area without a public restroom facility not being at the top of the list.”

- “I am concerned that you could talk about doing anything to bring more public use of this property and toilet facilities are not the first concern...I say you do nothing if it does not include a toilet facility.”

**FWP Response:**

FWP has secured funding for a vault latrine, and one will be installed if/when the site is developed. As stated in the EA, the vault latrine will be placed on the west end of the parking area, not on the west end of the property, therefore the impacts identified in comment will not apply to the Treasure Island Homeowners. The latrine needs to be close to the parking area in order to facilitate pumping services, routine cleaning, and higher use by visitors. If necessary, vegetative screening will be planted, during the proper planting times, around the vault latrine to mitigate any issues of visual aesthetics. The latrine will be incorporated into the routine maintenance duties of park staff.

***Funding***

- “The \$10,000 allocated for the site improvement doesn’t seem to be enough to cover all the aspects of the plan, much less the land acquisition, the landscaping and fencing, or the toilet by themselves.” (Foy’s Lake/Herron Park Advisory Committee to the Flathead County Park Board)
- “The EA mentions a cost estimate of \$10,000. How do you know? What does an installed vault latrine cost? I am concerned that the \$10,000 estimate is a guess and complete development will cost more. I think the site plan needs to be completed, approved and engineer’s estimate made before throwing out numbers. I am concerned that the development not be started until complete financing is secured that will allow for the construction of a completed project.”

**FWP Response:**

The \$10,000 identified in the EA is the allocated amount for the proposed site development. Additional funding has been secured for the vault latrine. This allocation does not include any land acquisition, as the proposal is for a land trade. The potential land acquisition of the Lone Pine Ranches Homeowners property is dependent on the Montana Forest Products land trade. The Montana Department of Transportation has agreed to provide funding to purchase guardrail and gravel for the project. A significant amount of volunteer assistance will be utilized to define the trail system and rehabilitate the east parcel.

***Usage Increase***

- “By performing these improvements the area usage will increase.”
- “Once you start this project it will attract more visitors than come now.”

**FWP Response:**

The proposed site development does not increase the amount of available parking space. Vehicles can and currently do park on the road edge which is part of the highway right of way and out of FWP jurisdiction.

***Parking***

- “I support improving the parking lot and making it safer with an ingress/egress. I only support this if FWP will encourage MDOT to post “No Parking” signs along the road and open dialog with the Sheriff/Highway Patrol regarding ticketing violators. If the new paved parking lot fills up users will park along Foy’s Lake Road and Lone Pine Road making the situation more dangerous than it is right now.”

- “We urge FWP, County Parks, MDOT, Sheriff’s Dept., and Highway Patrol to begin communication together about ways to improve the safety of this high use recreational area. As numbers of people and cars continue to increase, so will pedestrian/traffic conflicts. When lots are full, how to handle more people, more parking is a challenge.”
- “I think that adequate parking with policing of overflow is very important. I encourage the development and enforcement of no parking zones along Foy’s Lake Road.”
- “Better parking and trail access to the lake would also be very helpful.”
- “Parking for only 30 cars will not be adequate.”
- “Site hardening for ingress/egress will improve the safety and accessibility of the site.”
- “I am concerned about dust and erosion of the proposed parking area. I believe the new parking area should be paved with asphalt.”
- “Development will improve public safety and health for a site that is getting heavy use under current status.”

**FWP Response:**

The proposed site development is intended to improve safety. Although FWP realizes that 30 parking spaces is not adequate for the current demand of the site, we cannot safely and effectively provide any more parking at this time. The amount of parking this project will supply is approximately equal to the number of vehicles that currently use the site on a busy day. Vehicles currently do park on the road edge, which is part of the highway right of way and out of FWP jurisdiction. FWP supports any efforts involving Montana Department of Transportation, Flathead County Weeds and Parks, and the Flathead County Sheriff’s Office on reducing safety hazards on Foy’s Lake Road. There is not enough funding available to pave the parking area; however, FWP is looking into the possibility of using recycled roadbed. This material would compact and retain its form more than gravel and reduce any concerns of dust and erosion.

***Weeds/Vegetation***

- “Landscaping and spraying for noxious weeds will make the entire area more attractive and give incentives for the public to keep it that way.”
- “You speak about weed control in the park, which is good, yet when I have talked to the weed department in the past they could not spray because of the proximity to the lake. What is the distance from the lake, which you are permitted to spray? How do you plan to abate weeds closer to the lake? What about using a grass seed mix and fertilizer on disturbed ground?”

**FWP Response:**

In compliance with the FWP Statewide Integrated Noxious Weed Management Plan of 2008, Regional staff will utilize the appropriate tools and herbicides to protect water quality in Foy’s Lake.

***Not an Impartial EA***

- “We suggest that the document (as the title states) is not an impartial environmental assessment formulated to consider at least 3 different alternatives, but one to promote a land trade for mutual benefit but also for a particularly wealthy family.”

**FWP Response:**

The Montana Environmental Protection Act outlines that environmental assessments identify a preferred alternative and evaluate those impacts. In this case the Preferred Alternative was Site Development and Land Trade because it best addresses issues identified through internal and

public scoping meetings. Impacts for Alternative B, Site Development without Land Trade, are the same as those identified for the preferred alternative.

### ***Site Plan/Master Plan***

- “One important piece of information in the EA that seems to be missing is a site plan. Without a site plan it is impossible to make a thorough analysis in an EA or the ability to evaluate an EA. Please let me know where I may view this site plan. In this regard, your comment period may be premature as well as the proposed construction period.”
- “A site plan be developed and made public prior to any decision for land trading.”
- “A Master Plan for the area be completed. Citizens deserve to know the general intent of how Montana wants to manage entrusted parklands. There should be opportunities for public input including hearings explaining each impact and the types of mitigation if appropriate.”

### **FWP Response:**

A concept plan has been added to the EA. It shows the conceptual layout of the proposed parking area and vault latrine. The FWP property located on Foy’s Lake is part of Lone Pine State Park and is included in the Lone Pine State Park Management Plan completed in 2004. The management plan outlines the need for addressing the current issues at the site. The following is an excerpt from the Lone Pine State Park Management Plan:

*Lone Pine State Park Management Plan, May 2003, page 31:*

#### **2. Provide basic development of the Foy’s Lake property.**

##### *Action item:*

- Install barrier rocks, reclaim user-caused roads, and install day use signing.  
*Implementation:* Barrier rocks need to be installed in two separate parking areas on the Foy’s Lake segment of Lone Pine State Park. Barrier rock will be intended to keep vehicular traffic on the lakeshore and on the same grade as Foy’s Lake Road. Rutted, user-caused roads that exist now need to be reclaimed through soil scarification and reseeded. Day use signing needs to be installed as well.

### ***EIS Needed***

- “That an Environmental Impact Statement be prepared for FWP’s management decisions. Management decisions should be a result of the direction of the Master Plan.”

### **FWP Response:**

The EA has been updated to address impacts identified through the comment period. The final EA adequately addresses all relevant impacts of the proposed project. The management plan for Lone Pine State Park outlines the plan for the Foy’s Lake parcels.

### ***Access for Treasure Island Homeowners***

- “I find your analysis incomplete in that you have considered impacts to the Lone Pine Ranches homeowners, but not a word was mentioned about the significant impacts to the Treasure Island homeowners...with the land trade we would lose direct access to the FWP property we currently enjoy.”
- “We have asked how the new parcel of land will affect our use of access to the area from the northwest as landowners. We have been using the access for many years (prescriptive easement across the property by trail).”

**FWP Response:**

There is no record of a trail easement or designated trail leading to Treasure Island Lane. There are user-created trails throughout the FWP parcels, and this proposal would retain some of those while removing or rerouting others to prevent erosion. The homeowners on Treasure Island would still be able to access the FWP property by following Foy's Lake Road to the designated parking area.

***Trash***

- "There needs to be trashcans placed by the beach."

**FWP Response:**

At this time, FWP is not planning on having trash collection in the proposed project. Typically, in sites similar to Foy's Lake, where development is kept at a minimum, the site is classified as a "Pack It In, Pack It Out" site, meaning that trash collection is not available on site. In the past, FWP has attempted to place trashcans at sites that were typically "Pack It In, Pack It Out" and have encountered issues of having household trash dumped at the site.

***Bike Path***

- "Hopefully, we'll also have a bike/pedestrian path making it safe for nonmotorized access in the future."

**FWP Response:**

The proposed site development will allow for the addition of a bike path on the south side of the parking area. This will keep all pedestrian traffic away from vehicular traffic.

***Boating***

- "You may want to look into a recommended "circulation" for powerboats and watercraft...you could place a sign at the boat ramp and the beach area."

**FWP Response:**

Boating regulations and/or restrictions fall outside of the scope of this EA. These regulations would need to be presented and approved by the FWP Commission.

***Beach***

- "At least part of the reason this property is seeing greater use than it used to is because there is now a beach. This has only happened in the last 5-6 years as the water level has dropped. What happens when the water level comes back up and the beach goes under water again?"

**FWP Response:**

FWP proposes this project based on the current heavy use. If the water level does rise and the beach is under water again, then visitation will likely diminish. FWP will continue to manage and maintain the site.

***Public Access***

- "Development of the Foy's Lake Site is a good plan and fulfills FWP's mandate to provide recreational opportunities for Montana citizens."

**FWP Response:**

So noted.

## ***Zoning***

- “We have also asked about zoning of the new parcel and how that classification will be assigned. Apparently, there is still some question about the actual zoning classification and potential for development...The new private land might possibly be converted to residential property...Could we expect commercial development of the property; possibly a boat house, dock, maybe even a food stand? A land trade was made several years ago for the purpose of allowing an adjacent landowner additional space for his septic leaching field, which was never constructed. Instead, development on this former park property included the building of a large house and double garage (exhibit A – photo). Is this what might be expected from a similar proposed trade?”
- “As for the land swap, I am not apposed to it, but I think we should know what is going directly across from us on this lot as well.”
- “We are also concerned about what will occur even if the land swap is not made. What will happen if the State makes developmental changes to the property close to us?”
- “The EA mentions a land trade but does not analyze potential impacts of that trade. How will you value the fact that Forest Products will trade a parcel with limited access and use with greater access and use? What is Forest Product’s intention with their new land? How will land use change on their isolated island? Will they secure a road easement from Jon Olson? Will they share costs of road maintenance on their new access?”
- “We cannot accurately comment on the EA until we know the clear potential for development of the park property involved in a land trade. Different classifications of zoning are assigned different sized land areas and also determine setbacks for construction from property lines and lakeshore as examples. We assume there is a possibility of commercial development including many different options for profit making enterprises. None of this is addressed in the EA.”

## **FWP Response:**

There is a potential of visual impacts to residents and recreationists, in the event that the land traded to Montana Forest Products was developed for residential use. However, there is also potential for development of the current Montana Forest Products land without a trade.

Development of the current property would have more of a visual impact to the recreation site. Foy’s Lake is one of the most heavily developed lakes in the Flathead Valley, thus the overall impact is not significant. This impact has been added to the environmental assessment.

According to the Flathead County Planning and Zoning office, the proposed land traded to Montana Forest Products is classified as R-2 (residential), meaning there is potential that a house could be built on the lot. Other commercial uses are prohibited and would need a variance, which is subject to public review. FWP’s clear motivation is to clean up the segmented property ownership, lessen the public trespass on private property, and ensure that the public has access to a highly used area. FWP does not intend to use department-owned lands to prevent development of private property on Foy’s Lake. Montana Forest Products will need to acquire an easement for their property. Excerpts from the Flathead County Planning and Zoning office are below.

## ***Zoning: Comments from Flathead County Planning and Zoning***

- “The subject properties are under the planning jurisdiction of the Flathead County Growth Policy. That document provides guidance on parks and recreation and calls for a specific parks plan, which has not yet been finalized. The proposed development of the Foy’s Lake access furthers the public’s vision for the future of Flathead County found in Chapter 1 of the Growth Policy. Furthermore, the proposed development of the Foy’s

Lake access helps Flathead County in achieving the 3 goals specific to parks and recreation found in Chapter 4 of the Flathead County Growth Policy by conforming to many of the accompanying policies. Therefore, the proposal is well supported by adopted Flathead County planning documents.”

- “According to the project proposal, there are a total of 4 zoned properties impacted by the project (see Figure 1 below). The western-most property (1.85 acres owned by Montana Fish, Wildlife and Parks) is zoned “R-2, One Family Limited Residential.” The three eastern-most properties (0.34 acres owned by Montana Forest Products, 0.05 acres owned by Lone Pine Ranches Homeowner’s Association and the 0.24 acres owned by Montana Fish, Wildlife and Parks) are zoned “SAG-5, Suburban Agricultural.” The proposed development would be in conformance with both zoning designations, which allow for “Parks and publicly owned recreational facilities” as permitted uses.”
- “The proposed land trades warrant additional consideration pertaining to minimum lot sizes imposed through zoning. The western 1.85 acres owned by Montana, Fish, Wildlife and Parks is currently compliant with the 20,000 sq ft minimum lot size requirement in the R-2 zone. However, the eastern properties are all non-conforming with the 5-acre minimum lot size requirement in the SAG-5 zone. It is the long-standing interpretation of this office that lots with non-conforming status with regard to size can be boundary line adjusted and retain that status. Lots that are conforming with regard to size cannot be boundary line adjusted to a non-conforming size. The proposed land trade wherein Montana Forest Product’s “inholding” land is flipped to the western side of the project retains the conforming/non-conforming status of each of the four properties in the project and is therefore allowable under zoning.”

**FWP Response:**

So noted.

***Land Trade***

- “Montana Forest Products (MFP) is hoping to work out a land trade/exchange with Montana Fish, Wildlife and Parks (FWP) that will reflect equal value for both entities.”
- “I support the land trade. I also strongly support FWP purchasing the parcels if the landowners are willing to sell (or donate).”
- “Without the land trade you will have the same conflicts with the private property in holding as before...the neighbors to the west may appreciate private property on their border; however, if it was ever sold or developed it may cause some concern.”
- “The land swap is a good thing to pursue in order to consolidate the public holdings into one contiguous area and enhance its management. We support FWP efforts to purchase or promote donation of the parcels from landowners.”
- “All negotiations for real estate actions be terminated until more thorough planning activities are completed.”
- “The site should not be developed if the land trade is not completed. Improving conditions on FWP lands would only cause more use and deterioration of the private land.”
- “We have approached FWP on two different occasions asking for the dimensions of the property that is to be converted from parkland to private ownership and have just recently received response estimate.



- “The land trade must recognize the existing access that Montana Forest Products has had since 1908. It is imperative that the land trade includes access in some form including R/W across FWP lands if necessary.”
  - “We would like to make FWP aware of some of the history and issues that we believe still need to be resolved in order to accomplish an equal land trade.”
    - ...Our tract of land is .496 acres versus the .34 acres that continues to be referenced by FWP. A subsequent survey had been done that Heine’s firm was not aware of. Additionally, such appraisal was prepared based on the assumption that there is no legal access to our property, which, as set forth below, is something we strongly dispute.
    - Also, FWP states that MFP in an “inholder.” This has not been proven to be the case as is shown by some of the past history involving our piece of lakeshore.
    - In 1982, Charles O’Neil wrote the County Commissioners asking them to please notify MFP (formerly Forest Products) if the county road, which came to the edge of the MFP tract was ever to be abandoned. He further state that this parcel of shoreline is to access the island in Foy’s Lake owned by MFP.
    - In August 1984, Charlene O’Neil gave testimony before a public hearing at Lone Pine Visitors Center giving notice to FWP that they continued to show MFP land as part of their 1981 Lone Pine Park Proposal. Please see the enclosed letter to Don Hyypa.
    - Notes to our files show that FWP understood that the former county road was our access. In 1985, FWP was contacted by Charlie Phillips (the former County Road Superintendent) regarding the placing of rocks along the former county road. FWP called us and said they would remove the rock from the road to allow our access. Again in 1990, we spoke to Dave Conklin of FWP and mentioned that we did not want to lose our access. Merl Phillips returned a call saying access would not be a problem and that they didn’t intend to restrict us. During the entire time that we have owned this property, we have continually accessed it via the former county road, and it is our intention to continue doing so.
    - Things became even more complicated when the Foy’s Lake Secondary Highway was built. A small sliver of land that was at least part of the former county road was somehow made a tract of land that the Lone Pine Ranches HOA (across the highway) have been paying taxes on. Certificate of Survey 5508 shows this sliver of land as part of a tract of land that the HOA gave to FWP. A corrected COS 5508 takes the sliver of land off the Certificate of Survey and it becomes a part of our tract, which we believe is proper given our understanding of Montana law and given the history and circumstances of this matter. However, we have approached the HOA and offered to buy this sliver of land just to try to clear things up but they have been unwilling to sell—perhaps being fearful that a structure might be built that would detract from their view of the lake. We are currently deciding whether it is necessary for us to file a quiet title action to clean up this ownership issue.
- “To state more clearly, we feel we have always had access to our tract of land because we were never notified by the County or the State Department of Transportation that they were abandoning our access and FWP has always acknowledged that we have access. We do want to work with FWP for trading to a parcel away from their proposed Foy’s Lake Site Development and feel that our land

should be appraised as equal or greater front footage value as FWP's land, especially given the better waterfront of our property."

**FWP Response:**

So noted. There are currently no land trade/real estate actions occurring. A preliminary land appraisal was completed in order to assess whether or not a land trade was a feasible option prior to developing the alternative in the EA. The specific dimensions of the proposed trade property based on the initial appraisal are only estimates. A more detailed analysis and appraisal will need to be completed before exact dimensions are known. The land trade would be based on current appraisal values. Possible issues with total acreage and legal access would be addressed prior to determining appraisal value and prior to any possible land trades. Montana Forest Products will need to acquire an easement for their property.

**Finding of No Significant Impact (FONSI):**

Based on the analysis in the EA and comments received, I find Alternative C to be the preferred alternative. Therefore, FWP will proceed with the site development and land trade. The land trade will depend on a mutual agreement between FWP and Montana Forest Products, and final approval by the FWP Commission and the State Land Board. The draft EA has been updated with the changes noted in the above FWP responses to public comment. I have evaluated the EA and applicable laws, regulations, and policies and have determined that this action will not have a significant effect on the human environment. Therefore, an environmental impact statement will not be prepared.

The final EA may be viewed at or obtained from Montana Fish, Wildlife & Parks, Region One, 490 N. Meridian Road, Kalispell, MT 59901, or the FWP web site at [fwp.mt.gov](http://fwp.mt.gov) under Recent Public Notices. Please direct requests and questions to Amy Grout, FWP Parks Management Specialist, 406-755-2706, Ext. 3, or e-mail to [agrout@mt.gov](mailto:agrout@mt.gov).

In accordance with FWP policy, an appeal may be made by any person who has either commented in writing to the department on the proposed project, or who has registered or commented orally at a public meeting held by the department on the proposed project, or who can provide new evidence that would otherwise change the proposed plan. An appeal must be submitted to the Director of FWP in writing and must be postmarked or received within 30 days of this decision notice. The appeal must describe the basis for the appeal, how the appellant has previously commented to the department or participated in the decision making process, and how the department can provide relief. The appeal should be mailed to: Director; Fish, Wildlife & Parks; 1420 East 6<sup>th</sup> Ave.; Helena, MT 59620.



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David Landstrom  
Regional Parks Manager

November 23, 2009

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Date